

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2603 OF 2006

Shri Jayantilal Deepchand Parmar ..Petitioner

Vs.

State of Maharashtra and ors. ..Respondents

Mr.S.R. Page for petitioner.

Mr. D.R. More, APP for State.

Mr. Nitin Jamdar for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : September 11, 2007.

P.C.:

1. Heard Mr. Page the learned counsel for the petitioner.

2. Rule. Mr. Jamdar waives service for respondent no.2 and the learned APP appears for the State. Respondent Nos.3 and 4 are only formal parties and they need not be issued notice. Rule is made

returnable forthwith.

3. The petitioner had filed STC No.1220 of 2004 against the present respondent nos.2 to 4 under Section 138 of the Negotiable Instruments Act, 1881. It was alleged that the accused nos.2 and 3, the partners of accused no.1-Partnership Firm had approached the complainant and purchased gold ornaments worth Rs.15,03,938 and in discharge of this liability Cheque No. 060044 drawn on the Citizen Co-Op. Bank Ltd., Yerawada Branch, Pune was issued on 19/5/2004 in the sum of Rs.15,03,938/- and the said cheque was dishonoured. Statutory notice thereafter was issued and though the accused no.2 received the said notice, other accused refused to accept the same. There was no response within 15 days period and, therefore, the complaint was moved before the learned JMFC at Pune. Process order was issued in the said complaint and, in fact, the trial had commenced. Criminal Revision Application No. 368 of 2006 came to be filed by accused no.2 for quashing and setting aside the order dated 21/6/2004 i.e. the order of issuance of process and the said revision has been

allowed as per the Judgment and Order dated 12/9/2006 passed by the learned Additional Sessions Judge, Pune and the said order has been brought in question in this petition.

4. As per the learned Additional Sessions Judge the averments made in the complaint did not indicate that the accused no.2 was responsible for and in-charge of the day to day activities of accused no.1- Partnership Firm, it was also not mentioned in the complaint that the dishonoured cheque was signed by accused no.2 and, therefore, he was not required to face the trial. The learned Additional Sessions Judge accepted the plea of the accused no.2 that the signature though resembled the word "Dinesh", it could not be conclusively stated that it was the signature of accused no.2. The Sessions Court further referred to the scheme of Section 141 of the Negotiable Instruments Act, 1881 and quashed the process issued against the accused no.2.

5. There is no doubt that the accused nos.2 and 3 are the partners of accused no.1-firm. Whether the

dishonoured cheque was signed by accused no.2 or by accused no.3 is a matter of evidence to be adduced before the trial court. It was not the case of the accused no.2 that he was an idle partner in the said firm. In such a situation whether he was responsible for and in-charge of the day to day activities of accused no.1 is a mixed question of law and facts and, therefore, the responsibility or involvement of accused no.2 in the affairs of accused no.1-firm will have to be decided on the basis of the evidence that the parties may adduce during the trial of the complaint. Merely because the signature was disputed by accused no.2, it was unwarranted for the learned Additional Sessions Judge to hold that the accused no.2 has not signed the cheque. The law laid down by the Apex Court in the case of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla [2005 Cri.L.J. 4140] is not obviously applicable in the instant case. The learned Addl. Sessions Judge fell in gross errors in quashing the process issued against accused no.2.

6. Hence, the petition succeeds and the same is hereby allowed. The impugned order passed by the

learned Additional Sessions Judge, Pune is hereby quashed and set aside and consequently Criminal Revision Application No. 368 of 2006 stands dismissed. Trial of the case is expedited and it is made clear that none of the observations made in this order will influence the trial court in deciding the case on its own merits. Rule is made absolute accordingly.

(B.H. Marlapalle, J.)